

2ESSB 6508 - H COMM AMD

By Committee on Judiciary

NOT CONSIDERED 3/04/2010

1 Strike everything after the enacting clause and insert the
2 following:

3
4 **"Sec. 1.** RCW 4.20.020 and 2007 c 156 s 29 are each amended to
5 read as follows:

6 (1) Every ((such)) action under RCW 4.20.010 shall be for the
7 benefit of the ((wife, husband)) spouse, state registered domestic
8 partner, ((child)) or children, including stepchildren, of the person
9 whose death shall have been so caused. If there ((be)) is no ((wife,
10 husband)) spouse, state registered domestic partner, or ((such)) child
11 ((or children, such)), the action may be maintained for the benefit
12 of:

13 (a) The parents((, sisters, or brothers, who may be dependent upon
14 the deceased person for support, and who are resident within the
15 United States at the time of his death)) of a deceased adult child if
16 the parents are financially dependent upon the adult child for support
17 or if the parents have had significant involvement in the adult
18 child's life; or

19 (b) Sisters or brothers who are financially dependent upon the
20 decedent for support if there is no spouse, state registered domestic
21 partner, child, or parent.

22 In every such action the jury may ((give such)) award economic and
23 noneconomic damages as((τ)) under all circumstances of the case((τ))
24 may to them seem just.

25 (2) For the purposes of this section:

26 (a) "Financially dependent for support" means substantial
27 dependence based on the receipt of services that have an economic or

1 monetary value, or substantial dependence based on actual monetary
2 payments or contributions; and

3 (b) "Significant involvement" means demonstrated support of an
4 emotional, psychological, or financial nature within the relationship,
5 at or reasonably near the time of death, or at or reasonably near the
6 time of the incident causing death.

7
8 **Sec. 2.** RCW 4.20.046 and 2008 c 6 s 409 are each amended to read
9 as follows:

10 (1) All causes of action by a person or persons against another
11 person or persons shall survive to the personal representatives of the
12 former and against the personal representatives of the latter, whether
13 ~~((such))~~ the actions arise on contract or otherwise, and whether or
14 not ~~((such))~~ the actions would have survived at the common law or
15 prior to the date of enactment of this section(~~(+—PROVIDED, HOWEVER,~~
16 ~~That))~~).

17 (2) In addition to recovering economic losses for the estate, the
18 personal representative (~~(shall only be))~~ is entitled to recover on
19 behalf of those beneficiaries identified under RCW 4.20.060 any
20 noneconomic damages for pain and suffering, anxiety, emotional
21 distress, or humiliation personal to and suffered by ((a)) the
22 deceased (~~(on behalf of those beneficiaries enumerated in RCW~~
23 4.20.020, and)) in such amounts as determined by a jury to be just
24 under all the circumstances of the case. Damages under this section
25 are recoverable regardless of whether or not the death was occasioned
26 by the injury that is the basis for the action.

27 (3) The liability of property of spouses or domestic partners held
28 by them as community property and subject to execution in satisfaction
29 of a claim enforceable against such property so held shall not be
30 affected by the death of either or both spouses or either or both
31 domestic partners; and a cause of action shall remain an asset as
32 though both claiming spouses or both claiming domestic partners
33 continued to live despite the death of either or both claiming spouses
34 or both claiming domestic partners.

1 ~~((2))~~ (4) Where death or an injury to person or property,
2 resulting from a wrongful act, neglect or default, occurs
3 simultaneously with or after the death of a person who would have been
4 liable therefor if his or her death had not occurred simultaneously
5 with such death or injury or had not intervened between the wrongful
6 act, neglect or default and the resulting death or injury, an action
7 to recover damages for such death or injury may be maintained against
8 the personal representative of such person.

9
10 **Sec. 3.** RCW 4.20.060 and 2007 c 156 s 30 are each amended to read
11 as follows:

12 (1) No action for a personal injury to any person occasioning
13 death shall abate, nor shall ~~((such))~~ the right of action
14 ~~((determine))~~ terminate, by reason of ~~((such))~~ the death~~((7))~~ if
15 ~~((such))~~ the person has a surviving ~~((spouse, state registered~~
16 ~~domestic partner, or child living, including stepchildren, or leaving~~
17 ~~no surviving spouse, state registered domestic partner, or such~~
18 ~~children, if there is dependent upon the deceased for support and~~
19 ~~resident within the United States at the time of decedent's death,~~
20 ~~parents, sisters, or brothers; but such action may be prosecuted, or~~
21 ~~commenced and prosecuted, by the executor or administrator))~~
22 beneficiary in whose favor the action may be brought under subsection
23 (2) of this section.

24 (2) An action under this section shall be brought by the personal
25 representative of the deceased~~((7))~~ in favor of ~~((such))~~ the surviving
26 spouse or state registered domestic partner, ~~((or in favor of the~~
27 ~~surviving spouse or state registered domestic partner))~~ and ~~((such))~~
28 children~~((, or if))~~. If there is no surviving spouse ~~((or))~~, state
29 registered domestic partner, ~~((in favor of such child))~~ or children,
30 ~~((or if no surviving spouse, state registered domestic partner, or~~
31 ~~such child or children, then))~~ the action shall be brought in favor of
32 the decedent's:

33 (a) Parents ~~((, sisters, or brothers who may be dependent upon such~~
34 ~~person for support, and resident in the United States at the time of~~

1 ~~decedent's death~~) if the parents are financially dependent upon the
2 decedent for support or if the parents have had significant
3 involvement in the decedent's life; or

4 (b) Sisters or brothers who are financially dependent upon the
5 decedent for support if there is no spouse, state registered domestic
6 partner, child, or parent.

7 (3) In addition to recovering economic losses, the persons
8 identified in subsection (2) of this section are entitled to recover
9 any noneconomic damages personal to and suffered by the decedent
10 including, but not limited to, damages for the decedent's pain and
11 suffering, anxiety, emotional distress, or humiliation, in such
12 amounts as determined by a jury to be just under all the circumstances
13 of the case.

14 (4) For the purposes of this section:

15 (a) "Financially dependent for support" means substantial
16 dependence based on the receipt of services that have an economic or
17 monetary value, or substantial dependence based on actual monetary
18 payments or contributions; and

19 (b) "Significant involvement" means demonstrated support of an
20 emotional, psychological, or financial nature within the relationship,
21 at or reasonably near the time of death, or at or reasonably near the
22 time of the incident causing death.

23
24 **Sec. 4.** RCW 4.24.010 and 1998 c 237 s 2 are each amended to read
25 as follows:

26 (1) A (~~mother or father, or both,~~) parent who has regularly
27 contributed to the support of his or her minor child, (~~and the~~
28 ~~mother or father, or both, of a child on whom either, or both, are~~) or
29 a parent who is financially dependent on a minor child for support or
30 who has had significant involvement in the minor child's life, may
31 maintain or join (~~as a party~~) an action as plaintiff for the injury
32 or death of the child.

33 (2) Each parent, separately from the other parent, is entitled to
34 recover for his or her own loss regardless of marital status, even

1 though this section creates only one cause of action(~~(, but if the~~
2 ~~parents of the child are not married, are separated, or not married to~~
3 ~~each other damages may be awarded to each plaintiff separately, as the~~
4 ~~trier of fact finds just and equitable)~~).

5 (3) If one parent brings an action under this section and the
6 other parent is not named as a plaintiff, notice of the institution of
7 the suit, together with a copy of the complaint, shall be served upon
8 the other parent: PROVIDED, That notice shall be required only if
9 parentage has been duly established.

10 Such notice shall be in compliance with the statutory requirements
11 for a summons. Such notice shall state that the other parent must
12 join as a party to the suit within twenty days or the right to recover
13 damages under this section shall be barred. Failure of the other
14 parent to timely appear shall bar such parent's action to recover any
15 part of an award made to the party instituting the suit.

16 (4) In (~~such~~) an action under this section, in addition to
17 damages for medical, hospital, medication expenses, and loss of
18 services and support, damages may be recovered for the loss of love
19 and companionship of the child and for injury to or destruction of the
20 parent-child relationship in such amount as, under all the
21 circumstances of the case, may be just.

22 (5) For the purposes of this section:

23 (a) "Financially dependent for support" means substantial
24 dependence based on the receipt of services that have an economic or
25 monetary value, or substantial dependence based on actual monetary
26 payments or contributions; and

27 (b) "Significant involvement" means demonstrated support of an
28 emotional, psychological, or financial nature within the relationship,
29 at or reasonably near the time of death, or at or reasonably near the
30 time of the incident causing death.

31
32 NEW SECTION. Sec. 5. This act applies to all causes of action
33 filed on or after July 1, 2011.

1 NEW SECTION. **Sec. 6.** (1) On December 1, 2011, and every December
2 1st thereafter, the risk management division within the office of
3 financial management shall report to the house ways and means
4 committee, the house judiciary committee, the senate ways and means
5 committee, and the senate government operations and elections
6 committee, or successor committees, on the incidents covered by this
7 act that involve state agencies.

8 (2) On December 1, 2011, and every December 1st thereafter, each
9 local government risk pool or local government risk management
10 division, or the equivalent in local governments, shall report to the
11 legislative body of the local government on the incidents covered by
12 this act that involve the local government.

13 (3) This section expires December 2, 2016.

14

15 NEW SECTION. **Sec. 7.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected."

19 Correct the title.

20

EFFECT: The striking amendment makes the following changes:

- Removes the provisions that eliminate the joint and several liability of the state and its political subdivisions in actions based on a parent's significant involvement in an adult child's life.
- Provides that the act applies to actions filed on or after July 1, 2011.
- Clarifies that in a general survival action economic damages are recovered for the estate and provides that beneficiaries are the same as under the special survival statute.
- Provides that the OFM report is to be submitted to the House Judiciary and Ways & Means Committees (rather than the House Appropriations and State Government & Tribal Affairs Committees) and delays the reporting dates by one year.
- Makes technical changes for consistent use of terms.

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